

SENATE RECORD VOTE ANALYSIS

104th Congress
1st Session

Vote No. 60

January 27, 1995, 1:51 p.m.
Page S-1665 Temp. Record

UNFUNDED MANDATES/Substitute

SUBJECT: Unfunded Mandate Reform Act of 1995 . . . S. 1. Kempthorne motion to table the Levin substitute amendment No. 218.

ACTION: MOTION TO TABLE AGREED TO, 58-39

SYNOPSIS: Pertinent votes on this legislation include Nos. 15-41, 43-45, 47-59, and 61.

As reported by the Governmental Affairs Committee and the Budget Committee, S. 1, the Unfunded Mandate Reform Act of 1995, will create 2 majority (51-vote) points of order in the Senate. The first will lie against the consideration of a bill or joint resolution reported by an authorizing committee if it contains mandates and if Congressional Budget Office (CBO) cost estimates on those mandates are unavailable. The second point of order will lie against the consideration of a bill, joint resolution, motion, amendment, or conference report that will cause the total cost of unfunded intergovernmental mandates in the legislation to exceed \$50 million.

The Levin substitute amendment would enact, with a few modifications, the provisions of S. 993 from the 103d Congress, 2nd session, as detailed below.

Congressional changes:

- committee reports on proposed legislation would include an identification and description of Federal mandates in that legislation, including an estimate of the costs they would impose on governments and the benefits that would accrue;
- if a committee proposed to provide funding for a mandate, it would be required to identify a specific proposed funding source;
- if a committee determined it was appropriate to impose an unfunded mandate it would explain why in its report;
- if a committee determined it was appropriate to preempt State, local, or tribal law it would explain why in its report;
- a committee would submit any proposed legislation containing a Federal mandate to the Congressional Budget Office (CBO) for scoring;
- the CBO would estimate the budgetary and financial impact of Federal mandates in major legislation expected to be considered in a Congress at the beginning of that Congress;

(See other side)

YEAS (58)			NAYS (39)		NOT VOTING (3)	
Republicans (51 or 100%)	Democrats (7 or 15%)		Republicans (0 or 0%)	Democrats (39 or 85%)	Republicans (2)	Democrats (1)
Abraham	Hutchison	Baucus		Akaka	Hollings	
Ashcroft	Inhofe	Breaux		Biden	Kennedy	Gramm- ² McCain- ²
Bennett	Jeffords	Graham		Bingaman	Kerrey	
Bond	Kassebaum	Heflin		Boxer	Kerry	
Brown	Kempthorne	Johnston		Bradley	Kohl	
Burns	Kyl	Nunn		Bryan	Lautenberg	
Chafee	Lott	Robb		Bumpers	Leahy	
Coats	Lugar			Byrd	Levin	
Cochran	Mack			Campbell	Lieberman	
Cohen	McConnell			Conrad	Mikulski	
Coverdell	Murkowski			Daschle	Moseley-Braun	
Craig	Nickles			Dodd	Moynihan	
D'Amato	Packwood			Dorgan	Murray	
DeWine	Pressler			Exon	Pell	
Dole	Roth			Feingold	Pryor	
Domenici	Santorum			Feinstein	Reid	
Faircloth	Shelby			Ford	Rockefeller	
Frist	Simpson			Glenn	Sarbanes	
Gorton	Smith			Harkin	Simon	
Grams	Snowe				Wellstone	
Grassley	Specter					
Gregg	Stevens					
Hatch	Thomas					
Hatfield	Thompson					
Helms	Thurmond					
	Warner					

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

- the CBO would assist committees in estimating the budgetary impact of proposed legislation on State, local, and tribal governments and the financial impact on the private sector;

- the CBO would prepare a statement on all bills except for appropriations bills that would contain the following: for intergovernmental mandates, an estimate of whether they would impose more than \$50 million annually in direct costs, and if so, estimates for the next five years of total costs and total Federal revenues (if any) provided to pay those costs; for mandates on the private sector, the same type of estimates would be provided, though the threshold amount would be \$200 million; an estimate of the mandate's effect on the economy would also be made, and the CBO would be permitted to find that it is not possible to make a reasonable estimate of the effect of the mandate on the private sector;

- the CBO would make a supplemental estimate for any bill that passed in an amended form for which it made an earlier estimate of mandates' costs; and

- a point of order would lie in the Senate against any authorizing legislation that exceeds the \$50 million threshold for direct costs of Federal intergovernmental mandates and that does not identify the Federal funding source to meet or exceed those costs (permitted sources would be from a reduction in appropriations, a reduction in direct spending, or an increase in revenues); the point of order would be waivable by majority vote.

Regulatory changes:

- agencies would consult with State, local, and Indian governments on proposed regulations and would seek to minimize their costs;

- agencies would prepare statements on proposed regulations that would impose Federal intergovernmental mandates that would cost in excess of \$100 million; those reports would include qualitative and quantitative cost/benefit analyses; and

- the Advisory Commission on Intergovernmental Relations would conduct a study of the total costs and benefits incurred by State, local and tribal governments of complying with Federal laws and regulations.

Miscellaneous:

- nothing in this Act would be subject to judicial review; and

- this Act would expire on December 31 1998.

Debate was limited by unanimous consent. Following debate, Senator Kempthorne moved to table the Levin amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

Those favoring the motion to table contended:

S. 993 from last year was a good bill, as our colleagues say, with broad support in Washington and across the country. S. 1 has even more enthusiastic support. Last year the Conference of Mayors wrote that they would not accept any amendments that would weaken the bill, not change it, as our colleagues have stated. Therefore, we were not surprised when we received a letter from the Conference in strong support of S. 1, which the mayors noted that this bill "is even stronger than what was before the Senate last year in that it requires Congress to either fund a mandate at the time of passage or provide that the mandate cannot be enforced by the Federal Government if not fully funded." The National Association of Counties, the National League of Cities, the National School Boards Association, the National Conference of State Legislatures, the National Association of Home Builders, the National Federation of Independent Business, the Chamber of Commerce and the National Retail Federation have all praised the strength of S. 1 and have urged its passage. We have not heard any calls to abandon this effort for the weaker bill of last Congress.

For local governments especially S. 1 is preferable because, as the Conference of Mayors noted in its letter, it puts some teeth into the requirement that intergovernmental mandates be funded. Under S. 993, all that had to be done was to authorize funding. If funding was then not provided, Senators could say that the appropriators had ignored their intention, but the mandate would still apply. Under this bill it would not. We have amended the bill during debate to give Congress the opportunity to reconsider a mandate if it is found that not enough funding has been provided, but the principle itself will still be in place--if an intergovernmental, unfunded mandate is going to be imposed, Senators are going to have the opportunity to make other Senators go on record as either favoring or opposing it.

Passing S. 993 would not by any means be disastrous. It is a very good bill, and would have very positive results. However, the bipartisan consensus from the people who must endure Federal mandates, State and local governments and private businesses, is that S. 1 is much better. Thus, we urge our colleagues to table the substitute Levin amendment, not because it is bad, but because it is not as good as S. 1.

Those opposing the motion to table contended:

Last year's bill on unfunded mandates, S. 993, was highly meritorious. It had been very carefully deliberated, it had very broad bipartisan support, and it had very strong support from State and local governments. The Conference of Mayors liked the bill so much, in fact, that they pledged that they would oppose any and all amendments that were offered to it. The bill before us, in most respects, closely emulates S. 993, yet it has significant problems that last year's bill did not have. In some respects, those problems

JANUARY 27, 1995**VOTE NO. 60**

have been fixed during floor consideration of S. 1, but many problems remain or have even been worsened.

Both bills establish points of order against mandates that do not have cost estimates, and both bills contain points of order against legislation that fails to authorize full funding for intergovernmental mandates. However, S. 1 then adds in a number of new provisions that will greatly complicate the process. These problems include: a requirement that an intergovernmental mandate be reviewed by Congress if an agency finds that not enough has been appropriated to pay for the mandate; the ceding of broad powers to the Budget Committee and the Parliamentarian to determine the cost of a mandate or even whether it exists; and the precedent of treating spending cuts on certain Federal programs (immigration) as unfunded mandates on the States.

None of these problems had to be added. Most Senators know that they favored last year's bill, but the changes that have been made during debate on S. 1 should indicate to them that there are some problems with it. Therefore, we urge the adoption of last year's bill as a substitute for the provisions of S. 1.